



March 27, 2009

ENGROSSED HOUSE BILL No. 1040

DIGEST OF HB 1040 (Updated March 25, 2009 1:29 pm - DI 106)

Citations Affected: IC 29-3.

Synopsis: Guardianships. Specifies a guardian's powers concerning the estate planning of a protected person. Repeals the statute limiting a guardian's power to engage in estate planning for a protected person to the part of the guardianship estate that is required for the protected person's future support or the future support of the protected person's dependents during the lifetime of the protected person. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2009.

Van Haaften, Foley

(SENATE SPONSORS — ZAKAS, BRODEN)

January 7, 2009, read first time and referred to Committee on Judiciary.
February 5, 2009, reported — Do Pass.
February 9, 2009, read second time, ordered engrossed. Engrossed.
February 12, 2009, read third time, passed. Yeas 92, nays 0.

SENATE ACTION

February 19, 2009, read first time and referred to Committee on Judiciary.
March 26, 2009, amended, reported favorably — Do Pass.

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EH 1040—LS 6151/DI 92+



March 27, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1040

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-3-9-4.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 4.5. (a) After notice to interested persons and upon**
4 **authorization of the court, a guardian may, if the protected person**
5 **has been found by the court to lack testamentary capacity, do any**
6 **of the following:**

7 (1) **Make gifts, in accordance with the protected person's**
8 **wishes.**

9 (2) **Convey, release, or disclaim contingent and expectant**
10 **interests in property, including marital property rights and**
11 **any right of survivorship incident to joint tenancy or tenancy**
12 **by the entireties.**

13 (3) **Exercise or release a power of appointment.**

14 (4) **Create a revocable or irrevocable trust of all or part of the**
15 **property of the estate, including a trust that extends beyond**
16 **the duration of the guardianship.**

17 (5) **Revoke or amend a trust that is revocable by the protected**

EH 1040—LS 6151/DI 92+



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person.

(6) Exercise rights to elect options and change beneficiaries under insurance policies, retirement plans, and annuities.

(7) Surrender an insurance policy or annuity for its cash value.

(8) Exercise any right to an elective share in the estate of the protected person's deceased spouse.

(9) Renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos.

(b) Before approving a guardian's exercise of a power listed in subsection (a), the court shall consider primarily the decision that the protected person would have made, to the extent that the decision of the protected person can be ascertained. If the protected person has a will, the protected person's distribution of assets under the will is prima facie evidence of the protected person's intent. The court shall also consider:

(1) the financial needs of the protected person and the needs of individuals who are dependent on the protected person for support;

(2) the interests of creditors;

(3) the possible reduction of income taxes, estate taxes, inheritance taxes, or other federal, state, or local tax liabilities;

(4) the eligibility of the protected person for governmental assistance;

(5) the protected person's previous pattern of giving or level of support;

(6) the protected person's existing estate plan, if any;

(7) the protected person's life expectancy and the probability that the guardianship will terminate before the protected person's death; and

(8) any other factor the court considers relevant.

(c) A guardian may examine and receive, at the expense of the guardian, copies of the following documents of the protected person:

(1) A will.

(2) A trust.

(3) A power of attorney.

(4) A health care appointment.

(5) Any other estate planning document.

SECTION 2. IC 29-3-9-4 IS REPEALED [EFFECTIVE JULY 1, 2009].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1040, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LAWSON L, Chair

Committee Vote: yeas 9, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1040, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, after "may" insert "**, if the protected person has been found by the court to lack testamentary capacity,**".

Page 2, line 11, after "ascertained." insert "**If the protected person has a will, the protected person's distribution of assets under the will is prima facie evidence of the protected person's intent.**".

and when so amended that said bill do pass.

(Reference is to HB 1040 as printed February 6, 2009.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 0.

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